IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 785 OF 2007

Tilak Nagar Jai Hind Co-op.Hsg.Society ...Petitioner
V/s.
Kabali Shekhar ...Respondent

Mr.C.J. Sawant, Sr.Advocate i/b. N.S. Dhumal for the Petitioner.
Mr.K.V. Tembe for the Respondent.

CORAM : V.M. KANADE, J.

DATED : APRIL 24, 2007

P.C. :-

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

2. The petitioner is challenging the order passed by the Co-operative Appellate Court dated 17th March, 2007 whereby he has vacated the interim mandatory injunction which is granted by the Co-operative Court directing the respondent to handover the possession of the premises.

3. It is the case of the petitioner that the society had decided to reconstruct the old building since it was in a dilapidated condition. Accordingly, no objection certificate was obtained from the Executive

Engineer of MHADA and the society had entered into Development Agreement with M/s.S.D. Construction. The grievance of the petitioner society is that out of 36 members, 35 members of the society had vacated the rooms which were in their possession and alternate accommodation also had been arranged for these members. It is submitted that the respondent herein was not willing to handover the possession and as a result, inconvenience was caused to the other members since work of reconstruction of the old building had come to a halt.

4. The learned Counsel for the respondent, on the other hand, submits that the Appellate Court gave a direction that the dispute which is pending before the Co-operative Court should be decided within a period of two months from the date of the order and that pursuant to the said direction, the respondent had filed a written statement. He submitted that at the ad-interim stage, mandatory injunction could not have been granted by the trial court. He submitted that therefore, the Appellate Court has given the aforesaid direction. He

submitted that he had no objection if the Co-operative Court proceeds on day to day basis and if such an order was passed, he was willing to co-operate with the Co-operative Court. He relied on the judgment of the Supreme Court in the case of **Deoraj V/s. State of Maharashtra and others, reported in (2004) 4 SCC 697.**

5. In my view, no case is made out for interfering with the order passed by the Co-operative Appellate Court. The direction has also been given by the Co-operative Appellate Court to decide the dispute within two months.

6. The Co-operative Court is, therefore, directed to decide the case within a period of two months as directed by the Co-operative Appellate Court and if necessary, to hear the case on day to day basis.

7. The respondent shall not create any third party interests and shall not induct any other person in the said premises.

. Writ Petition is disposed of in the above terms.

(V.M. Kanade, J.)